

CHAPTER 25

War Crimes

Investigation may be made of war crimes committed by an enemy against US personnel or of war crimes committed by US personnel against an enemy. A war crime is any violation of a law of war by any person or persons, military or civilian.

The laws of war are derived from two principal sources. They come from lawmaking treaties or conventions like the Hague and Geneva Conventions. They also come from a body of unwritten law firmly fixed by the custom of nations and recognized by authorities on international law.

The Geneva Conventions of 1949 spell out the customary laws of war. In the case of armed conflict, not *on* an international level, in the territory of one of the High Contracting Parties, each party is bound to apply some basic provisions. Persons who take no active part in hostilities shall be treated humanely. This includes members of armed forces who have laid down their arms and those removed from the conflict by sickness, wounds, detention, or other cause. No distinction in treatment will be made by race, color, religion, sex, birth or wealth, or any other similar criteria. The wounded and sick will be collected and cared for. And certain acts are prohibited at any time and place with respect

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to these non-participants. There will be—

- No violence to life and person, murder of any kind, mutilation, torture, or cruel treatment.
- No taking of hostages.
- No outrages upon personal dignity; humiliating and degrading treatment are expressly forbidden.
- No passing of sentences or carrying out of executions without prior judgment by a legitimate court affording all the judicial guarantees viewed as essential by civilized peoples.

More complete information about war crimes and the Geneva Conventions is contained in FM 27-10 and DA Pam 27-1.

War crimes investigations often have high-level government interest. They generate national and international news media coverage. Thus, war crimes investigations must be coordinated directly with the Army theater commander and his staff. They can deal directly with the US embassy and senior officials of an occupied country and the major combat units within the area.

COORDINATING SUPPORT

You may be called upon by the commander to be part of a USACIDC team to investigate alleged war crimes. Your logical point of initial contact is the Army theater PM. To exploit access to the US embassy and the Army theater commander, you may ask for help from USACIDC in Washington. They can set the initial ground work with the theater commander and his staff. Gaining the help of the theater commander will hasten the initiation of steps to get the USACIDC investigation team needed support.

When the initial liaison has been made with the theater commander, help and

resources from headquarters may be given to speed up the investigation. The theater headquarters can provide office space, communications, billeting spaces, and field equipment. They can also provide vehicles, priority in-country transportation via aircraft, clerical support, and partial fulfillment of interpreter requirements. Mail and DA pouch facilities are also available. And interested or involved units can be told of what is pending.

A supporting unit will be designated to help the investigative team. The supporting unit is usually, unless otherwise designated by the unit commander, one in whose area of

operation the team is working. Transportation is provided by this supporting unit as needed. A security force from the supporting unit is assigned to protect the investigators and witnesses when interviews must be in hostile areas. The size of this force often depends upon the enemy situation.

A combat arms officer is from the supporting unit assigned to the team. The officer should not be from a suspect battalion or company. If a company or battalion is involved in the investigation, the combat arms officer should be from the division or major command. The officer must have experience as a combat commander and, hopefully, also as a division staff officer. The combat arms officer develops a close rapport with the division command group and staff to gain needed support for the investigators. He advises the USACIDC team when schedules must be changed to prevent interference in division or major unit plans. He helps search for information contained in the unit files that is needed by the team. And he should coordinate your needs with the division or unit that will support the investigation.

There must be a means for reporting to the USACIDC in Washington. Message facilities, rather than voice (telephone),

should be used. Messages eliminate deficiencies of the voice system like unavailability of lines and static. And the message system lessens the problems with the differences of time zones around the world. It is more secure than voice and gives an exact reference copy of the message. And it is more economical than voice.

The USACIDC team must be well supplied with proper equipment and able to operate under adverse conditions. The USACIDC team must bring the specialized equipment it will need. Typewriters, writing materials, forms, and portable files are a necessity. Maps, aerial photographs, tape recorders, or cameras may be useful. A camera and tape recorder are useful for referral to statements and individuals. Polaroid cameras should be on hand to photograph interviewees at the end of each interview. The photographs are valuable as an identification tool and maybe useful in a future trial.

In some areas the combat uniform is needed. Sometimes, civilian clothing is better. The determining factor for attire, in addition to climate and war conditions, are the witnesses. If the witnesses are more relaxed with someone in civilian clothing, then that clothing should be worn.

CONDUCTING THE INVESTIGATION

When investigating war crimes, you will work closely with the office of the SJA, which answers to the commander for the administration of war crime matters. You will also work with intelligence, counter-intelligence, and investigative agencies of both the United States and of the host nation.

When investigating war crimes, you will not discuss claims with potential claimants. Have SJA personnel on hand to answer any claims questions that arise against the US government for injuries sustained by war crimes victims and their families.

Standard interview techniques must be modified with war crimes survivors and witnesses. One problem that must be overcome is the language barrier. The investigative team must have experienced, reliable, and competent interpreters. And the

interpreters must be able to convey the attitude and personality of the investigators. It is best that part of the team be fluent in languages. The investigators will be able to convey their own ideas and thoughts much more clearly to the interviewees. An alternative is to use US interpreters from a military intelligence unit or the supporting unit. But US interpreters lack USACIDC background investigative experience and the ability to reflect your personality.

A less effective alternative is to use a local national. But even with good language skills, they may hurt the investigation. Local national interpreters are often indifferent to the outcome of an investigation. They may have no patience with very old, very young, or confused witnesses. Local nationals are often unreliable or do not associate themselves with the USACIDC mission. And like US

interpreters, they lack USACIDC background and investigative experience and are often unable to reflect the personality of the investigators for whom they interpret. If US or local national interpreters must be added to the USACIDC investigation team, provisions for payment, billeting, and messing must be made.

A second problem bearing on interviews involves cultural differences. Interviewees may be not only fearful and apprehensive, they may be illiterate and/or completely unsophisticated. In some parts of the world, standard units of measure, western calendars, and direction by reference to points of the compass are nonexistent. Consideration must be made to overcome these differences.

A third problem is the human tendency of investigators to be less disciplined and

systematic in their questioning when they do a long series of interviews on the same basic topic. The chief investigator can help the team by preparing a comprehensive list of key questions. Designed to elicit the most complete statements from the interviewees, it will also ensure uniformity of coverage.

Care in picking the interview site can help offset some of these problems. Interviews are best done in a desired atmosphere near the witnesses' homes. Thus, many more witnesses, including very young and very old, can be questioned and will submit to questioning. And USACIDC funds can be used to provide cigarettes, gum, and like items for interviewees. The funds also will be used to supply the team with the national currency. Thus, members can assure interviewees that they will be reimbursed for out-of-pocket expenses incurred incidental to interviews.

